UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/531,102	03/17/2000	Robert Giannini	JARB.004PA	5258

40581 7590 06/23/2006

CRAWFORD MAUNU PLLC
1270 NORTHLAND DRIVE, SUITE 390
ST. PAUL, MN 55120

EXAMINER	
KYLE, CHARLES R	
ART UNIT	**PAPER NUMBER**
3624	

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/531,102	GIANNINI ET AL.	
	Examiner	Art Unit	
	Charles Kyle	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Use of the word "compatible" makes the Claim vague and indefinite. One persons color compatibility could be unpleasant to another person; no consistent, objective standard of color compatibility is set out.

Consider clothing colors of the 1970s. Bright orange and green colors were considered "compatible" by some, but not others at the time, and the combination is now generally considered ugly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 17, 19-22 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,016,504 *Arnold et al*, already of record, in view of US 5,537,211 *Dial*.

As to Claim 17, *Arnold* discloses the invention substantially as claimed, including in a system for comparison of multiple apparel articles, elements of:

an on-line viewer site (Fig. 1B, ele. 1B12, 1B13 and 1B14); and

a computer-driven web-linking engine (Col. 8, line 8 to Col. 11, line 33) configured and arranged to display a first colored apparel article selected by an on-line viewer from the on-line viewer site (Fig. IB, ele. 1B13, Shirt) for display with a second colored apparel article selected by an on-line viewer from the on-line viewer site (Fig. IB, ele. 1B14, Pants).

Arnold does not specifically disclose using a color matching criterion to determine whether the first colored apparel article color matches the second colored apparel article color. *Dial* discloses this limitation at Col. 6, lines 35-48. In this instance, a first colored apparel article (e.g., belt) is color matched to a second colored apparel article (e.g., a dress). It would have been obvious to one of ordinary skill in that art at the time of the invention to include the color matching feature of *Dial* in the apparel article comparison system of *Arnold* because this would provide a smallest difference between the colors of the two apparel articles. This motivation is specifically set out by *Dial* at Col. 6, lines 49-61, and repeated below:

> *The metric used by the present invention to determine an appropriate wearable measures the difference in color between an object of interest and a wearable in a database. Small values of the metric indicate a close color match whereas large values indicate a poor match. The metric characterizes the color distance from an object of interest to each available wearable. As described above, the object may be skin and the wearable a cosmetic, or the object may be an article of clothing and the wearable another article of clothing. In general, the object may any object whose color is measured and the wearable any of a selection from which to find the best color match. The best match wearable is the selection characterized by the smallest value of the metric.*

Concerning Claim 19, *Arnold* discloses a first colored apparel article retrieved from a first store (Fig. 1B, ele. 1B20, Haberdasher Co.) and a second colored apparel article retrieved from a second store (Fig. 1B, ele. 1B30, Mad Hatter Co.)

Concerning Claim 20, *Arnold* discloses a first colored apparel article retrieved from a first store (Fig. 1B, ele. 1B20, Haberdasher Co., Pants) and a second colored apparel article retrieved from the same store (Fig. 1B, ele. 1B20, Haberdasher Co., Shirt)

With respect to Claim 21, *Arnold* discloses that at least one of the first and second colored apparel articles is provided by a retail store (Fig. 1B, ele. 1B20, Haberdasher Co., Pants) and that the web-linking engine is independent of the retail store (Fig. 1B, ele. 1B10, ACME Cyberstore).

Regarding Claim 22, see the discussion of Claims 19 and 21.

Regarding Claim 30, *Dial* discloses a color reference-coding chart at Col. 7, line 42 to Col. 8, line 32, particularly Table II.

With Respect to Claim 31, *Dial* discloses color-coding based on measured color frequencies (wavelength) at Col. 8, lines 36-45.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,016,504 *Arnold et al*, already of record, in view of US 5,537,211 *Dial* and further in view of US 5,930,769 *Rose*, already of record.

With respect to Claim 18, *Arnold* discloses the invention substantially as claimed. See the discussion of Claim 17. *Arnold* does not disclose an image corresponding to a structure dressed in apparel articles. *Rose* discloses this limitation at Col. 7, lines 44-67, particularly lines 58-62. It would have been obvious to one of ordinary skill in that art at the time of the invention to modify *Arnold* to include the image corresponding to a structure dressed in apparel articles

(mannequin) of *Rose* because this would show a customer how selected apparel articles would fit and look. See *Rose* at Col. 7, lines 8-62 for this motivation.

Claims 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,016,504 *Arnold et al*, already of record, in view of US 5,537,211 *Dial* and further in view of US 6,323,969 *Shimizu et al.*

As to Claim 23, *Arnold* discloses the invention substantially as claimed. See the discussion of Claim 17. *Arnold* does not specifically disclose comparison of color codes. *Shimizu* discloses such codes at Fig. 39 and Background of the Invention. See CMY values 255 255 255, fifth and seventh entries, right hand column of Fig. 39. Note that these "match" having the same values. Additionally , see Fig. 37, which indicate color matches as "In Color Range". It would have been obvious to one of ordinary skill in that art at the time of the invention to modify *Arnold* to use the color codes of *Shimizu* as a basis of color comparison of apparel items because this would provide an accurate and objective basis for matching of apparel color and prove esthetically pleasing.

With Respect to Claim 24, note that a color code common to each color for comparison has a common color code (e.g., 255 240 253 and 255 240 247, the string 255 240 being common to each of the color codes.

Regarding Claims 25 and 26, for purpose of examination, the term "compatible" is understood to comprise the concept of identical. See *Shimizu*, Fig. 39 and Background of the Invention. See CMY values 255 255 255, fifth and seventh entries, right hand column of Fig. 39.

Automatic indication of acceptability would have been obvious to conveniently and quickly let users know of a color match.

With Respect to Claim 27, the CMY color values are implemented in electronic "tag" form, database table entries, as disclosed at Background of the Invention.

Regarding Claim 28, Official Notice is taken that it was old and weal known at the time of the invention to encode color information is electronic tags, such as a SKU. It would have been obvious to one of ordinary skill in that art at the time of the invention to modify *Arnold* to include such information to provide color information of products, usable for search and comparison.

With Respect to Claim 29, *Arnold* discloses a virtual closet at Fig. 1B and Col. 7, line 30 to Col. 8, line 44.

Response to Arguments

Applicant's arguments filed April 7, 2006 have been fully considered but they are not persuasive.

Applicants begin argument at page 5, fourth para. of Remarks. Applicants' first argument is that the references teach away from each other because they are not physically combinable. First, Applicants' cite no particular passage in either *Arnold* or *Dial* that specifically states such a teaching away. Second, Applicants argument consists of citing differences between the references, rather that incompatibilities.

In response to this argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the Examiner cited *Arnold* for the larger portion of the claimed invention and *Dial* to disclose the concept of color matching for esthetic purposes. The Examiner did not suggest the bodily incorporation of the physical device of *Dial* in the web shopping of *Arnold*, but rather simple color matching.

At page 6 of Remarks, first full para. Applicants argue that there is no motivation to combine. Applicant only vaguely addresses the Examiners motivation *and citation* to *Dial*, so the argument fails on this basis alone. Applicant fails to note that *Arnold* discloses objects displayed having a "smallest difference" in color, as set out in the rejection of claim 17. The Shirt and Pants displayed at Fig. 1B would provide a basis for comparison of color.

At page 6, second full para., Applicants essentially restate the first two arguments, addressed above. Applicants assert that the modification of *Arnold* by *Dial* would "undermine" the virtual nature of *Arnold*, but provide no reasoning as to why this is so. Applicants fail to explain why a skilled artisan would not be led to combine the references and does not address the motivation set out by the Examiner restated here:

It would have been obvious to one of ordinary skill in that art at the time of the invention to include the color matching feature of *Dial* in the apparel article comparison system of *Arnold* because this would provide a smallest difference between the

colors of the two apparel articles. This motivation is specifically set out by *Dial* at Col. 6, lines 49-61, and repeated below:

> ***The metric used by the present invention to determine an appropriate wearable measures the difference in color between an object of interest and a wearable in a database. Small values of the metric indicate a close color match whereas large values indicate a poor match. The metric characterizes the color distance from an object of interest to each available wearable. As described above, the object may be skin and the wearable a cosmetic, or the object may be an article of clothing and the wearable another article of clothing. In general, the object may any object whose color is measured and the wearable any of a selection from which to find the best color match. The best match wearable is the selection characterized by the smallest value of the metric.***

Applicants' last argument at page 6, last para. to page 7, is a variation on the bodily incorporation argument addressed above; the Examiner's response is similar.

The rejections are maintained.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,195,043 *Varner* for its teachings of color information encoding in electronic tags in the form of SKUs.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (571) 272-6746. The examiner can normally be reached on 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk
June 19, 2006

Primary Examiner
Charles Kyle
Au 3624